

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #5

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MAY 24 9 58 AM '96

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF A AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: West Virginia Tourism Commission TITLE NUMBER: 144

CITE AUTHORITY 5B-2-12

RULE TYPE: PROCEDURAL X INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES _____ X, NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: II

TITLE OF RULE BEING AMENDED: Direct Advertising Grants

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: _____

TITLE OF RULE BEING ADOPTED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE.

THE EFFECTIVE DATE OF THIS RULE IS June 24, 1996

Thomas C. Belms

Gaston Caperton, Governor



WEST VIRGINIA DEVELOPMENT OFFICE

CAPITOL COMPLEX
CHARLESTON, WV 25305-0311

May 24, 1996

The Honorable Ken Hechler
Secretary of State
State Capitol, Suite 157K
Charleston, West Virginia 25305

Dear Secretary Hechler:

Enclosed for filing are the final amended procedural rules of the West Virginia Tourism Commission related to direct advertising grants. Included in this package are the following:

- Notice of Agency Adoption of a Procedural Rule
- Promulgation History
- Final Procedural Rules
- Comment received during the comment period
- Response to comment

Please feel free to contact me if you should have any questions or need additional information.

Sincerely,

A handwritten signature in dark ink, appearing to read "Thomas C. Burns". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Thomas C. Burns
Executive Director

TCB:dd

Enclosures

cc: Bill Bright
James Lawrence

TITLE 144
PROCEDURAL RULES
TOURISM COMMISSION
SERIES II
DIRECT ADVERTISING GRANTS

PROMULGATION HISTORY

These procedural rules, which govern the process for making available moneys deposited in the Tourism Promotion Fund for direct advertising within the state's eight regional development districts, have the following promulgation history:

- **March 20, 1996** - Rules filed with the Secretary of State. Comment period begins.
- **April 19, 1996** - Comment period ends.
- **May 24, 1996** - Final rules filed with Secretary of State with Notice of Adoption.
- **June 24, 1996** - Effective date of rules.

FILED
May 24 9 59 AM '96
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Title 144
Procedural Rules
Division of Tourism & Parks
Series 2
Direct Advertising Grants

144-2-1 General

- 1.1 Scope -- These procedural rules govern the application and award criteria for disbursement of direct advertising grants for regional advertising from the "tourism promotion fund."
- 1.2 Authority -- West Virginia Code 5B-2-12
- 1.3 Filing Date -- May 24, 1996
- 1.4 Effective Date -- June 24, 1996

144-2-2 Definitions

- 2.1 "Qualified Applicant" means an organization whose purpose, in whole or in part, is to promote the tourism industry of West Virginia; which demonstrates the ability to provide the required match when invoiced; which represents a city, county, region or regions, or tourism industry or activity; and which in the judgment of the Commission adequately represents the interests of the regional development district or districts which the applicant's application covers.
- 2.2 " Commission" means the nine-member Tourism Commission created by West Virginia Code §5B-2-8.
- 2.3 "Division" means the West Virginia Development Office, or any successor agency or office.
- 2.4 "Total project cost" means the total of all proposed project expenditures.

144-2-3 Applications

- 3.1 An applicant shall apply for tourism promotion funds on forms supplied by the Commission or on exact computer duplicates.
- 3.2 The application shall include the complete advertising or marketing plan, in sufficient detail to permit evaluation against the required criteria. The application shall include a complete media plan with run dates and advertising costs as well as a complete description of the project, event, fair or festival. The information shall be broken out by individual publications with ad size, specific broadcast stations, billboard locations, advertising agency fees, printing costs, production supplier/vendor costs and any other applicable charges.
- 3.3 Creative design and agency fees that are a part of the application shall be reasonable and customary.
- 3.4 The Commission may request such additional information as it determines necessary to evaluate any application, including but not limited to financial and budgetary information related to the application or to the applicant.
- 3.5 Failure to provide the required application information, or failure to provide such additional information as the Commission reasonably requests by a specific date, in order to evaluate any application, may at the Commission's option, disqualify the application.
- 3.6 The Commission may establish application deadlines and dates for grant award cycles. If the Commission does so, it shall disseminate notice of such dates to the West Virginia Hospitality and Travel Association and to any other person or organization requesting to be placed on the Commission's mailing list for such purpose.
- 3.7 All applications and required submissions associated with a project not awarded shall be returned to the applicant; however, evaluation forms and findings made by the Division or the Commission shall be maintained for a period of twelve months.
- 3.8 In order to assure that funds received by an applicant under this program are not used to fund regular ongoing advertising activities but instead to support new advertising activities, the Commission may require that an applicant furnish financial information as described in §3.3 of these rules.
- 3.9 The Commission reserves the right to reject any application on the basis of the amount of funding sought, to request the applicant to revise an

application to a lower or higher level of funding, or to award more or less than the full amount requested in the application.

- 3.10 No application shall be considered by the Commission unless the applicant's share of the project cost is at least \$10,000.00, unless the application is filed under the small grant program established for fairs and festivals described in §7.3 of these rules.

144-2-4 Review and Evaluations

- 4.1 The Division shall review all applications for completeness and conformance to guidelines. Applications deemed not complete or not in conformance with guidelines by the Division shall be returned to the applicant for additional information.
- 4.2 The Commission shall establish a subcommittee to evaluate and score all applications that are complete and conform to guidelines. The subcommittee may include non-commission members, but the majority shall be Commission members. The chair of the subcommittee shall be a Commission member and shall report to the Commission the subcommittee's scoring and recommendations for each application considered. Final approval or rejection must be upon a vote of the Commission.
- 4.3 Each application will be scored on the basis of 100 points, as detailed in §144-2-5. Individual scores will be totaled and averaged for each application to produce the final score.

144-2-5 Evaluation Criteria

- 5.1 Eligible applications shall be evaluated and scored, up to a maximum of 100 points, on the following basis.
1. Up to 25 points -- project demonstrates potential for a strong positive return on investment, is well researched and includes tracking and evaluation measures.
 2. Up to 25 points -- project is appropriate to the market selected and complements or carries forward goals or objectives included in the Tourism Strategic Marketing Plan.

3. Up to 20 points -- project encompasses multiple attractions, municipalities, counties, or a regional development district or districts.
4. Up to 20 points -- project is creative, professional in quality and attainable with the funds requested or with additional identified and available funds.
5. Up to 10 points -- project is to a new market or media.

144-2-6 Match Requirement

- 6.1 Applicant must provide a minimum of 50% of the total project cost.
- 6.2 Cost overruns above the award amount shall be borne by the applicant unless the Commission grants prior approval in writing.
- 6.3 Any changes in the project after award requires prior approval of the Commission and may not materially change the project's objective or goal.
- 6.4 The match shall be a cash match. No in-kind services may be utilized for the match but may be utilized to reduce the overall cost of the project.
- 6.5 State funds from any source may not be used for the match. Non-state funds from any source may be used for the match.

144-2-7 Eligible Expenditures; Ineligible Expenditures

- 7.1 Eligible expenditures are those directly related to direct advertising. Direct advertising includes but is not limited to advertising on television, radio, newspaper, magazines and outdoor advertising (billboards) or any combination thereof.
- 7.2 Ineligible expenditures include, but are not limited to:
 1. Administrative costs of the applicant, including travel costs.
 2. Cost associated with preparation of the application.
 3. Rent or the purchase of real estate.
 4. Construction costs.

5. Political or lobbying activities of any kind.
 6. Membership fees or dues to any organization.
 7. Costs associated with the start up of any business or publication although it may partially or totally be devoted to the promotion of tourism in the state.
 8. Purchase or rental of any audio/visual equipment.
 9. The costs of alcoholic beverages.
 10. Expenditures not identified within the project application, unless the Commission grants prior approval in writing.
- 7.3 There is hereby established a small grant program to be administered by the Division. Awards under this program shall include, but not be limited to, events, fairs and festivals and individual grants shall not exceed \$500 per applicant. The applicant must provide a minimum of 50 percent of the total project cost, but the requirements of section 6.5 of these rules shall not apply to the small grants program. In addition, awards under the small grants program may be used to fund ongoing advertising programs. Total grants awarded under this program shall not exceed \$25,000 in any fiscal year and shall be used by the applicant solely for advertising purposes. Small grant awards shall require the approval of the director of the Division.

144-2-8 Audit & Compliance

- 8.1 The state reserves the right to review/audit an applicant's records relating to the project. Records must be retained for a minimum of three years after the close of the project.
- 8.2 The state may terminate any project agreement upon discovery of any violation of the terms of the agreement, these rules, or state or federal law.
- 8.3 Approved grant recipients shall provide to the Division quarterly written evaluations of the advertising program supported by the grant. If the grantee determines that program changes are necessary to improve the overall effectiveness of the project, the grantee may submit a letter of request for program changes to the Commission for their review. The letter of request shall contain a description of the proposed changes and a narrative describing why the changes would improve the

overall effectiveness of the project. The Commission may approve the changes requested without the submission of a new project application.

144-2-9 Project Agreement

- 9.1 Simultaneously with the award of a project, the Division shall enter into an agreement with the applicant detailing the responsibilities of both parties, the payment schedule, the project timetable, and any other necessary or appropriate conditions.
- 9.2 The agreement shall require the applicant to hold harmless the State of West Virginia for any liability arising from the agreement.



P.O. Box 2391 • Charleston, WV 25328 • 304-342-6511

April 4, 1996

West Virginia Tourism Commission
2101 Washington Street, East
Charleston, WV 25305
Attention: Jim Lawrence

RE: Title 144 Procedural Rules Division of Tourism and Parks Section 2 Direct Advertising Grants

To whom it may concern:

Thank you for the opportunity to comment on the above-referenced rules. We commend the commission for realizing the rules needed some revision, and we appreciate the opportunity to offer our comments, which follow.

Proposed language

- 3.2 The application shall include the complete advertising or marketing project, in sufficient detail to permit evaluation against the required criteria. The application shall include a complete media plan with run dates and advertising costs. The information shall be broken out by individual publications with ad size, specific broadcast stations, billboard locations, advertising agency fees, printing costs, production supplier/vendor costs and any other applicable charges.

Discussion

It was thought that this language is too restrictive for some of the non-traditional forms of advertising we have found to be most beneficial to the state. We do, however, realize the need for specificity to monitor the program.

Alternative language

- 3.2 The application shall include the complete advertising or marketing project, in sufficient detail to permit evaluation against the required criteria. The application shall include a complete advertising or marketing plan which shall include as appropriate: run dates, advertising costs and event descriptions. The information shall be broken out by individual publications or events. When advertising is involved, the information shall include ad size, specific broadcast stations, billboard locations, advertising agency fees, printing costs, production supplier/vendor costs and any other applicable charges. When events are involved, the information shall include the name of the event, its location, how many people will be involved, advertising agency fees, printing costs, production supplier/vendor costs and any other applicable charges.

Proposed language

- 3.3 Creative design and agency fees that are a part of the application shall be reasonable and customary.

Discussion

This is significant new language. We realize the commission has reevaluated whether or not to include design and agency fees in the consideration for grants, and we acknowledge that there are advantages and disadvantages to both sides of the argument. Therefore, we propose the following language.

Alternative language

- 3.3 Agency fees that are a part of the application shall be reasonable and customary.

Discussion

While we understand agency fees, we feel creative design costs should be borne by the private entity requesting the grant, thus making more dollars available for direct advertising.

Proposed language

- 4.1 ~~The Commission will~~ Division shall review all applications for completeness and eligibility. Applications deemed not complete by the Division shall be returned to the applicant for additional information.
- 4.2 The Commission shall ~~establish a subcommittee to evaluate and score all eligible complete applications. The subcommittee may include non-commission members, but the majority shall be commission members. The chair of the subcommittee shall be a Commission member and shall report to the commission the subcommittee's scoring and recommendation for each application considered. Final approval or rejection must be upon a vote of the commission.~~

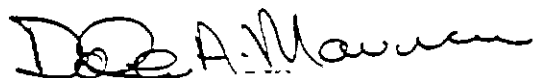
Discussion

We applaud adding a level of administrative review. It should streamline the process for all involved. We would however question if the Division should determine eligibility. We have structured our alternative language to express those concerns. We have suggested in the past that the Review Committee be comprised of a mix of non-commission members and commission members. We feel that two members should be legislators—one from the House and one from the Senate, if there is no conflict.

Alternative language

- 4.1 The Division shall review all applications for completeness and ~~eligibility~~ and conformance to guidelines. Applications deemed not complete ~~or in conformance with guidelines~~ by the Division shall be returned to the applicant for additional information. (Note: Underlining in this instance shows proposed language changes to the amended language proposed by the Division.)
- 4.2 The Commission shall establish a subcommittee to evaluate and score all applications that are complete and conform to guidelines. The subcommittee may include non-commission members. The chair of the subcommittee shall be a Commission member and shall report to the commission the subcommittee's scoring and recommendation for each application considered. Final approval or rejection must be upon a vote of the commission.

Sincerely,



Dale A. Maurer
Legislative Chair



May 22, 1996



Gaston Caperton
Governor

Development Office

Division of Tourism
State Capitol Complex
2101 Washington St., E.
Charleston, West Virginia
25305-0312

1 800 CALL WVA

James B. Lawrence
Commissioner

Commissioner's Office
304/558-2200
FAX: 304/558-2956

Administration
304/558-2358
FAX: 304/558-2956

Advertising
304/558-2286
FAX: 304/558-0108

Marketing
304/558-2286
FAX: 304/558-0108

Public Information
304/558-2286
FAX: 304/558-2873

Telemarketing
304/558-2766
FAX: 304/558-2279



Equal Opportunity
Employer

Mr. Dale A. Maurer
Legislative Chair
West Virginia Hospitality & Travel Association
Post Office Box 2391
Charleston, West Virginia 25328

Dear Mr. Maurer:

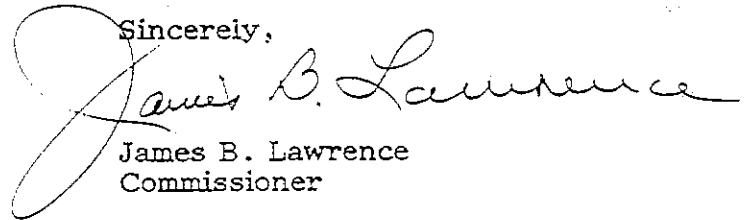
Thank you for your letter of April 4, 1996, in which you express, on behalf of the West Virginia Hospitality & Travel Association, your interest and comments concerning the proposed procedural rules governing direct advertising grants from the Tourism Promotion Fund. After due consideration of your comments, we have made the following changes to the procedural rules:

- ◆ Amended Section 3.2 to read as follows: "The application shall include the complete advertising or marketing plan, in sufficient detail to permit evaluation against the required criteria. The application shall include a complete media plan with run dates and advertising costs as well as a complete description of the project, event, fair or festival. The information shall be broken out by individual publications with ad size, specific broadcast stations, billboard locations, advertising agency fees, printing costs, production supplier/vendor costs and any other applicable charges."
- ◆ Amended Section 4.1 to read as follows: "The Division shall review all applications for completeness and conformance to guidelines. Applications deemed not complete or not in conformance with guidelines by the Division shall be returned to the applicant for additional information."
- ◆ Amended Section 4.2 to read as follows: "The Commission shall establish a subcommittee to evaluate and score all applications that are complete and conform to guidelines. The subcommittee may include non-commission members, but the majority shall be Commission members. The chair of the subcommittee shall be a Commission member and shall report to the Commission the subcommittee's scoring and recommendations for each application considered. Final approval or rejection must be upon a vote of the Commission."

Mr. Dale A. Maurer
May 22, 1996
Page Two

Thank you for your interest and comments. If you should have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "James B. Lawrence". The signature is written in dark ink and is positioned above the printed name and title.

James B. Lawrence
Commissioner

JBL/b

cc: William Bright
Thomas Burns

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

STEPHEN N. REED
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000
FAX: (304) 558-0900



WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

(Plus all the volunteer
help we can get)

TO: Rich Hartman

AGENCY: Tourism & Parks

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: July 11, 1996

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 2 TITLE: 144 Tourism & Parks

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

JUL 24 10 52 AM '96

FILED

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Carol Bayler

TITLE OF PERSON SIGNING: Executive Secretary

DATE: 7/19/96

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.

RECEIVED

JUL 18 1996

BUREAU OF COMMERCE
TRADE COMMISSION